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ABSTRACT

This handbook informs the reader of the provisions of the constitutions and statutes of California and the United States as they are interpreted by the courts to affect the rights and responsibilities of public school students. The first of the handbook's seven sections reviews the constitutional rights of students, their right and their duty to attend school, their right to an education, and their basic responsibilities. Section 2 concerns discipline, transfers to continuation schools, corporal punishment, student appearance codes, and smoking regulations. The third section focuses on proficiency standards, independent study, physical education options, special programs, married or pregnant students, and the exclusion of students from school. The topics of section 4 are refusal to salute the flag, student involvement in school affairs, student representation on district governing boards, and students' freedoms of expression, religion, and association. Section 5 examines the legalities of searches and seizures and considers the presence of law enforcement officers in schools. The sixth section discusses the levying or requiring of fees, deposits, and other charges, and reviews the prohibitions against sex discrimination. Section 7 covers parents' and guardians' rights to be informed of district policies affecting their children and to obtain access to their childrens' records. (PGD)

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STUDENTS' RIGHTS AND RESPONSIBILITIES HANDBOOK

1986 EDITION

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Preface

This is the third edition of the *Students' Rights and Responsibilities Handbook;* and as we go to press, new laws are being made, and new decisions are being written by the courts. In its 1985 term alone, the U.S. Supreme Court in *Wallace* v. *Jaffree* (53 U.S.L.W. 4665) found an Alabama moment-of-silence statute unconstitutional. The Court also held unconstitutional in *Aguilar* v. *Felton* (U.S.L.W. 5013) and *Grand Rapids* v. *Bell* (U.S.L.W. 5006) New York's and Michigan's Chapter 1 (ECIA) programs in which teachers were assigned to religious schools and used those facilities.

In California, the State Department of Education's Legal Office has filed an *amicus curiae* (friend of the court) brief in *People* v. *James Edward D.* (No. 32050), which is pending before the Supreme Court. We are urging the court to overturn a ruling of the Fourth District Court of Appeal that found California's truancy law unconstitutional. Other laws are being written and changed by the Legislature. The monumental Educational Reform Act of 1983 (Senate Bill 813) is perhaps the most cited example of how public education in California is changing.

The support for educational reform indicates that we are attempting to provide our children with the best education possible. What better way to achieve true excellence than to instill in our children a sense of appreciation for our laws and our legal system. The laws set forth in this handbook are those that apply generally to California's kindergarten through grade twelve school system. Rules and regulations of local school boards as well as the most recent laws, regulations, and decisions of our courts should be consulted before applying the general information contained in this handbook to specific situations.

Most laws and regulations are drafted for a reason. When the reason no longer exists, the law or regulation either is not used, is repealed, or is changed for a new reason. Nothing can substitute for this rule of reasonableness or common sense, and it is in this spirit that the *Students' Rights and Responsibilities Handbook* should be read.

Under the leadership of Superintendent of Public Instruction Bill Honig and the State Board of Education, California's educational initiatives have become national trendsetters. In pursuing excellence in our public schools, the civil liberties and rights of all—parents, teachers, school personnel, and students—should be recognized and respected. This handbook summarizes those rights without advancing the rights of one group over those of another. It is with this sense of fairness and respect that the reader should approach this handbook.

In closing, we thank Pat McGinnis, Administrative Assistant, Legal Office, and the staff of the Bureau of Publications for preparing this 1986 edition of this handbook.

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I

Fundamental Rights and Responsibilities

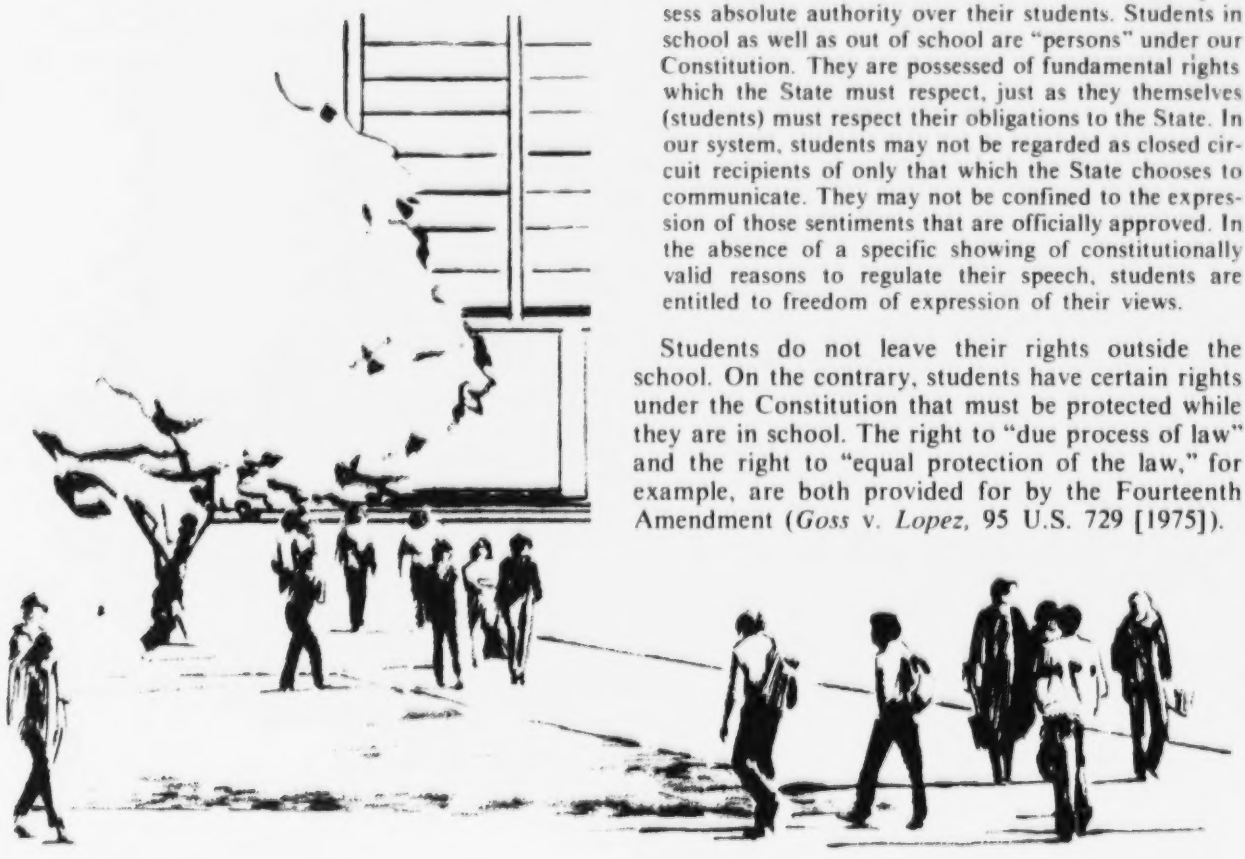
The information presented in Section I concerns the constitutional rights of students, the right of students to an education, the right of students to attend school, the basic responsibilities of students, and compulsory education.

The Constitutional Rights of Students

Students, whether they are on or off campus, possess certain fundamental constitutional rights as citizens of not only California but also of the United States. In the case of *Tinker* v. *Des Moines Community School District* (393 U.S. 503 [1969]), the decision of the U.S. Supreme Court included the following:

> In our system, state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves (students) must respect their obligations to the State. In our system, students may not be regarded as closed circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

Students do not leave their rights outside the school. On the contrary, students have certain rights under the Constitution that must be protected while they are in school. The right to "due process of law" and the right to "equal protection of the law," for example, are both provided for by the Fourteenth Amendment (*Goss* v. *Lopez,* 95 U.S. 729 [1975]).



A recent U.S. Supreme Court decision concerns the legality of searches of students conducted by public school officials (*New Jersey* v. *T.L.O.*). The court concluded in part that under ordinary circumstances a search of a student by school teachers and officials will be justified when there are reasonable grounds for suspecting the search will turn up evidence that the student has violated or is violating the law or rules of the school.

The California Supreme Court is reviewing a recent lower court decision (*People* v. *James Edward D.*, 4 Civ. 30948 Div. 3) that held that law enforcement officers must have actual knowledge rather than probable cause to believe that the person is a truant public school student before stopping and interrogating that individual.

The Right to an Education

The California Supreme Court has held that education is a fundamental right of all students in California since education is essential to future economic, social, and personal growth (*Serrano* v. *Priest*, 18 Cal. 3d 728 [1976]).

Neither the *Education Code* nor the *California Administrative Code, Title 5, Education*, contains any provisions with respect to the action that a student and/or his or her parent or guardian may take when one or both believe that the student is not receiving the education to which he or she is entitled. However, the ruling in the case of *Doe* v. *San Francisco Unified School District* (60 Cal. App. 3d 814) has made clear that the student and/or his or her parent or guardian may *not* sue for money damages in such instances.

Whenever a student or his or her parent or guardian believes that the student is not being afforded the education to which he or she is entitled, the student or his or her parent or guardian should first consult with the teacher or a counselor about the problem. If no change results, the student and his or her parent or guardian should next discuss the matter with the vice-principal or principal of the school. If the school administrators are unable or unwilling to provide assistance, the student or his or her parent or guardian should bring the matter to the attention of the district superintendent or even the school district governing board.

The Code of Ethics of the Teaching Profession (Section 80130 of the *California Administrative Code, Title 5, Education*) states that "the educator believes in the worth and dignity of human beings" and that in fulfilling the goal of assisting students toward the realization of their potential as worthy and effective citizens, the educator will honor their integrity and will influence them through constructive criticism rather than by ridicule and harassment. Thus, steps similar to those described in the preceding paragraph should be taken when a student believes that he or she has not been treated with courtesy and respect.

The Right to Attend School

Education is both an economic and social necessity for the individual. It is also a necessity for the well-being of society. Many people believe that ignorance and the lack of mental and moral training in the early years lead to immorality and crime in later years.

The courts have ruled that "attendance at a public school is a legal right protected and entitled to the guarantees by which other legal rights are protected and secured" (*Ward* v. *Flood*, 48 Cal. 36; *Wysinger* v. *Crookshank*; 82 Cal. 588; *Miller* v. *Dailey*, 136 Cal. 212). Consequently, the parent or guardian of a child and the state in which the child resides are duty-bound to provide to him or her at least a reasonable opportunity for the improvement of his or her mind and the elevation of his or her moral condition.

The California Supreme Court has held that education is a "fundamental interest"; that is, that the right to receive an education is protected by the California Constitution (*Serrano* v. *Priest*).

Student Responsibilities

As a result of recent court decisions and recent legislation, public school students now enjoy more rights and privileges than ever before. Along with these new rights and privileges, however, they also have increased responsibilities. Students must realize that they will be held accountable for certain acts that involve or affect both school personnel and their fellow students.

In California all students have the responsibility to "comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of the schools" (*Education Code* Section 48908). In addition, students, like all persons, have the responsibility to respect the rights of all other individuals.

In short, students must demonstrate responsibility in the exercising of their rights.

Compulsory Education

A state has the power to make and enforce provisions for the compulsory education of children within the state (*Ex parte Liddell*, 93 Cal. 633). More specifically, the state of California may require that (1) parents place their children in a public school or a private school that meets certain prescribed conditions; or (2) children receive from a private tutor or other person who possesses the required qualifications instruction in the subject matter prescribed by the *Education Code* (*People* v. *Turner*, 121 Cal. App. 2d Supp. 861). By instituting compulsory education for specific categories of minors, the California Legislature has exercised the state's power in this regard.

Although the Legislature has the right to prescribe compulsory education for specified categories of minors, it does not have the power to compel such minors to receive instruction from public school teachers only. Such authority would take away the right of parents to direct the upbringing and education of children under their control (*Roman Cath. etc. Corp.* v. *City of Piedmont* (45 Cal. 2d 325), which would be unconstitutional (*People* v. *Turner*). However, the compulsory education system of California, since it provides for exemption of children attending private schools or receiving private instruction (*Education Code* sections 48222 and 48224), is not subject to objection on this ground (*People* v. *Turner*). Furthermore, the right of parents to send their children to private rather than public schools is subject to a reasonable exercise of the state's police power (*Roman Cath. etc. Corp.* v. *City of Piedmont*).

A student may be excused from school for justifiable personal reasons when requested in writing by the parent and approved by the appropriate school official, and he or she has the right to complete all assignments and tests missed during the absence. Such absences would include court appearance, religious holiday or ceremony, and employment conference (*Education Code* Section 48205).

Compulsory Education for Minors Ages Six to Sixteen

As provided by *Education Code* Section 48200, each parent, guardian, or other person having control or charge of a minor who is between the ages of six and sixteen years and who is not exempted by statute must send the child to a public full-time day school for the entire time during which the public schools of the city, city and county, or school district in which the minor lives are in session.

Any exemption of a minor from attendance at a public full-time day school must be obtained from the proper school authorities (*Education Code* Section 48220). School authorities must grant exemptions to children who can be classified as follows:

1. Children whose physical or mental condition is such that it prevents or renders inadvisable attendance at school or application to study (*Education Code* Section 48221)
2. Children who are being instructed in a private full-time day school that meets certain requirements (*Education Code* Section 48222)
3. Children who are mentally gifted and who are being taught in a private full-time day school (*Education Code* Section 48223)
4. Children who, for at least three hours a day and 175 days of each calendar year, are being instructed in English and the other branches of

study required to be taught in the public schools by a private tutor or other person holding a valid credential for the grade taught (*Education Code* Section 48224)

5. Children who are in entertainment or allied industries and who are taught by qualified persons or organizations (*Education Code* Section 48225)
6. Children who, on the recommendation of the principal, the supervisor of attendance, or the superintendent of schools and upon the approval of the Superintendent of Public Instruction, have been assigned to a vocational course in a place of employment (*Education Code* sections 48227—48228) (Such children must be over the age of fourteen and must have a valid work permit.)
7. Children who hold permits to work (*Education Code* Section 48230) (Such children must attend part-time classes, however.)

Any person who has control of a minor and who fails to comply with any of the provisions of the compulsory education law related to minors ages six to sixteen, unless excused or exempted therefrom, is guilty of an infraction and is subject to fines (*Education Code* Section 48293).

Compulsory Education for Minors Ages Sixteen to Eighteen

As provided by *Education Code* Section 48400, all persons who are at least sixteen but under eighteen years of age and who are not exempted by statute shall attend special continuation education classes maintained by the governing board of the high school district or unified district in which they reside or by the governing board of a neighboring high school district or unified district for not less than four 60-minute hours per week for the regularly established annual school term. In addition, *Education Code* Section 48450 stipulates that each parent, guardian, or other person having control of a minor required to attend such classes must compel such attendance.

Education Code Section 48410 provides for exemption from compulsory continuation education of persons who:

1. Have been graduated from a high school maintaining a four-year course above grade eight or who have had an equal amount of education in a private school or by private tuition
2. Are attending a public or private full-time day school or satisfactory part-time classes maintained by other agencies
3. Are disqualified for attending these classes because of their physical or mental condition or because of personal services that they must render to their dependents
4. Are satisfactorily attending a regional occupational center (ROC) or regional occupational program (ROP) as provided in *Education Code* Section 48432
5. Have demonstrated proficiency equal to or greater than the standards established by the Department of Education pursuant to *Education Code* Section 48412 and who have verified approval of their parent or guardian to withdraw from school (*Education Code* Section 48410)
6. Are between the ages of sixteen and eighteen, are regularly employed, and are attending classes for adults not less than four hours per week

Any parent, guardian, or other person who has control of a minor required to attend special continuation education classes and who fails to compel such attendance or who fails to retain a copy of the minor's work permit or to present it on request is guilty of a misdemeanor and is liable to a fine or imprisonment (*Education Code* sections 48450 and 48454).

II

Student Behavior

The information presented in Section II concerns discipline; transfer to continuation school; corporal punishment; dress codes, grooming, and appearance; and smoking areas.

Discipline

Students of all ages have one thing in common: A few of them break the rules of the school that they attend. The vast majority of incidents requiring the disciplining of students are settled within the school system. However, instances of students soliciting the assistance of the courts in their efforts to have adverse decisions by school authorities reversed are not uncommon. The perplexity of this type of problem is a familiar one: Schools must have the authority to establish and enforce both academic and disciplinary rules to further their efficient operation, while the student charged with a violation of these rules has the opposing interest of protecting himself or herself from being unreasonably deprived of his or her civil liberties and educational opportunities.

In California the Legislature has given to school authorities the power to maintain discipline in order that the public school system may function in accordance with its intended purpose. In like manner the *Education Code* provides that all students in public schools must comply with the regulations, pursue the required courses of study, and submit to the authority of the teachers (*Education Code* Section 48908). The code further provides that teachers must enforce the course of study, the use of legally authorized textbooks, and the prescribed rules and regulations (*Education Code* Section 44805) and that they must hold students to a strict account for their conduct on the way to and from school, on playgrounds, and during recess (*Education Code* Section 44807).

Suspension

As stated in *Education Code* Section 48910, a teacher may, for specified cause, suspend a student from his or her class for the day of the suspension and the day following. Immediately after taking such action, the teacher must report the suspension to the school principal for appropriate action. As soon as possible after suspending the student, the teacher

must ask the student's parent or guardian to attend a parent-teacher conference regarding the suspension. *Education Code* Section 48911 gives the principal of the school the authority to suspend a student for specified cause for not more than five consecutive school days.

Except in an emergency situation, a suspension by the principal must be preceded by an informal conference between the student and the principal or his or her designee. As used in the *Education Code*, the term *emergency situation* means "a situation determined by the principal to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel." If practicable, the teacher or supervisor who referred the student to the principal should also attend the conference. At the conference the student must be told of the charges and evidence against him or her and must be given an opportunity to present his or her version of the situation and evidence in his or her defense (*Education Code* Section 48911).

If the principal determines that an emergency situations exists and thus suspends a student without a conference, a conference shall be held within two school days of the ordering of the suspension (*Education Code* Section 48911).

At the time of suspension, a school employee must make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Within one school day of the beginning of a suspension, a school employee must mail a notice to the parent or guardian of the suspended pupil.

Whenever a principal suspends a student, the student or the student's parent or guardian may appeal the suspension to the district superintendent or the superintendent's designee. The superintendent or his or her designee must, within three school days after receiving the request for a meeting, grant a hearing (*Education Code* Section 48914). Within two school days after the hearing, the superintendent or his or her designee must determine whether or not sufficient evidence of the violation existed and whether the penalty imposed was appropriate for the violation (*Education Code* Section 48914).

No student may be suspended for more than 20 school days in one school year. If, for adjustment purposes, a student is transferred to or enrolled in another regular school, an opportunity class in his or her school of residence, an opportunity school or class, or a continuation education school or class, the number of additional days of suspension following the reassignment of the student is limited to ten (*Education Code* Section 48903) except as provided in sections 48911 and 48912 of the *Education Code*.

The teacher of any class from which a pupil is suspended may require the suspended pupil to complete any assignments and tests missed during the suspension (*Education Code* Section 48913).

Generally, a student may not be suspended until other forms of correction have failed to bring about proper conduct on his or her part (*Education Code* Section 48900.5).

Expulsion

The governing board of a school district may expel a student for specified cause. As used in the *Education Code*, the term *expulsion* is defined as "removal of a pupil from (1) the immediate supervision and control; or (2) the general supervision of school personnel as those terms are used in Section 46300 of the state *Education Code*." Before expelling a student, the governing board must determine that (1) other measures of correction have failed to bring about proper conduct; (2) other means of correction are not feasible; or (3) the nature of the student's violation is such that the presence of the student causes a continuing danger to the physical safety of the student or others (*Education Code* Section 48915).

Within 30 calendar days after a recommendation for expulsion has been made, the governing board must grant a hearing to the student. A written notice of the hearing must be given to the student at least ten days before the hearing date. The student may be represented by an attorney or other representative. And the student or his or her parent or guardian may inspect and obtain a copy of all relevant documents, may question witnesses, and may present evidence in support of the student. The hearing must be closed to the public unless the student requests that the hearing be a public hearing. The hearing may be conducted by (1) the governing board itself; (2) a state or county hearing officer; or (3) a panel of three certificated employees of the district, none of whom will be on the

staff of the school in which the student is enrolled (*Education Code* Section 48918).

If the governing board, hearing officer, or panel reverses the decision to expel, the student shall be reinstated to school. If a hearing officer or panel recommends expulsion, the governing board must base its decision on the evidence presented at the hearing. Regardless of whether an expulsion hearing is conducted in private or in public by the governing board, a hearing officer, or a panel, the governing board must take its final action to expel at a public meeting. If the decision of the governing board is to expel the student, the student or the student's parent or guardian must be notified in writing of (1) the governing board's decision; and (2) the right to appeal the expulsion to the county board of education (*Education Code* Section 48918). The student or the student's parent or guardian may appeal the expulsion to the county board of education within 30 days following the governing board's decision to expel (*Education Code* Section 48919).

Grounds for Suspension and Expulsion

Pursuant to *Education Code* Section 48900, a student may be suspended or expelled for any of the following actions while he or she is on school grounds or while he or she is off school grounds *and* involved in an activity related to school attendance:

1. Causing, attempting to cause, or threatening to cause physical injury to another person
2. Possessing, selling, or otherwise furnishing any firearm, knife, explosive, or other dangerous object unless the pupil has written permission from the principal
3. Unlawfully possessing, using, selling, or otherwise furnishing or being under the influence of a controlled substance, alcoholic beverage, or intoxicant of any kind
4. Unlawfully offering, arranging, or negotiating to sell any controlled substance, alcoholic beverage, intoxicant of any kind and then either selling, delivering, or otherwise furnishing to any person another liquid, substance, or material and representing it as a controlled substance, alcoholic beverage, or intoxicant
5. Committing robbery or extortion
6. Causing or attempting to cause damage to school property or private property
7. Stealing or attempting to steal school property or private property
8. Possessing or using tobacco, except as provided in *Education Code* Section 48901
9. Committing an obscene act or using habitual profanity or vulgarity
10. Having unlawful possession of or unlawfully offering, arranging, or negotiating to sell any drug paraphernalia
11. Disrupting school activities or defying the authority of school supervisors, teachers, or administrators, school officials, or other school personnel

Education Code Section 48915 requires the principal of a school to recommend expulsion of students for:

1. Causing serious physical injury to another person, except in self-defense
2. Possessing any firearm, knife, explosive, or other dangerous object of no reasonable use to the student at school or at a school activity off the school grounds
3. Unlawfully selling any controlled substance, except for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis
4. Committing robbery or extortion

Transfer to Continuation School

A student may be transferred involuntarily to continuation school on finding that he or she has committed any acts set forth in *Education Code* Section 48900 or has been habitually truant or who is irregular in attendance at school (*Education Code* Section 48432.5). (Section 48260.5 mandates the school district to notify the student's parent or guardian by first-class mail or other reasonable means that the pupil is truant.) Generally, involuntary transfer is imposed only when other means fail to bring about improvement in the student's behavior.

The procedure for transferring a student involuntarily to continuation school shall include written notice to the student and his or her parents, informing them of the opportunity to request a meeting to hear the specific facts and reasons for the transfer. At this hearing the student and the parents may inspect all documents used in preparing the case, question evidence and witnesses, and present evidence on behalf of the student. The student may designate representatives and witnesses to be present with him or her.

An involuntary transfer to continuation school shall not extend beyond the end of the semester following the semester during which the acts leading to the transfer occurred unless the local board has adopted a policy for yearly review of the involuntary transfer.

Students who have voluntarily transferred to continuation school shall have the right to return to the regular high school at the beginning of the following

school year and, with consent of district designee, return at any time (*Education Code* Section 48432.5).

Corporal Punishment

The governing board of a school district may adopt rules and regulations authorizing teachers, principals, and other certificated personnel to administer reasonable corporal punishment when such punishment is deemed an appropriate corrective measure (*Education Code* Section 49000). However, even when the governing board has adopted a policy of corporal punishment, such punishment shall not be administered to a student unless the student's parent or guardian has given written approval for such action (*Education Code* Section 49001).

A teacher, vice-principal, principal, or any other certificated employee of a school district shall not be subject to criminal prosecution for the exercise, during the performance of his or her duties, of the same degree of physical control over a student that the student's parent or guardian would be legally privileged to exercise. The degree of physical control that a certificated employee exercises shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, protect the health and safety of students, or maintain proper and appropriate conditions conducive to learning (*Education Code* Section 44807).

Dress Codes, Grooming, and Appearance

The Legislature has given to school district governing boards the authority to prescribe rules for the operation of the schools under their jurisdiction (*Education Code* Section 35291). Such rules must be consistent with law and with the rules prescribed by the State Board of Education. The authority of a governing board includes adopting rules and regulations relating to the appearance of students, including their dress. A school district may enforce these provisions by suspending or expelling a student who refuses or neglects to obey the rules prescribed by the governing board. Several lawsuits have resulted from regulations on hair lengths and dress codes. The California courts have held that the power to adopt these rules and regulations remains with the school district governing board; the board's power to do so has never been declared unconstitutional. However, many dress codes have been held constitutionally defective in their content. To pass the test of constitutionality, dress code rules must not be vague and must have a reasonable relation to the educational process.

Under the rule-making power of the State Board of Education, the following has been adopted (Section 302 of the *California Administrative Code, Title 5, Education)*:

> A pupil who goes to school without proper attention having been given to personal cleanliness or neatness of dress may be sent home to be properly prepared for school, or shall be required to prepare himself [or herself] for the schoolroom before entering.

Two federal court cases, *King* v. *Saddleback Junior College District* (445 F. 2d 932 [1971]) and *Olff* v. *Eastside Union High School District* (U.S App. 305 F. Supp. 557 [1969]), have upheld the school district's right to establish regulations for the day-to-day operation of its schools, including its right to develop a dress code, to specify acceptable hair length, and to demand conduct that is conducive to the fulfillment of its responsibility to educate.

Smoking Areas

Unless permitted by governing board rules and regulations, smoking or having tobacco while under the authority of school personnel or while on school premises constitutes cause for suspension or recommendation for expulsion (*Education Code* Section 48900).

Education Code Section 48901 authorizes the governing board of any school district maintaining a high school to adopt rules and regulations permitting the students of the high school to smoke and possess tobacco in a defined smoking area or areas on the high school campus or while under the authority of school personnel. This section also provides that the school district shall take all steps it deems practical to discourage high school students from smoking.

Penal Code Section 308 provides that it is unlawful for any person, firm, or corporation to sell, give, or furnish any type of tobacco product to anyone under the age of eighteen.

III

Educational Opportunity

The information presented in Section III deals with proficiency standards, independent study, options in physical education classes, special programs, school attendance of married students, school attendance of pregnant students, and the grounds on which students may be excluded from school.

Proficiency Standards

The governing boards of all high school districts and unified school districts maintaining junior, senior, and four-year high schools must adopt standards of student proficiency in the basic skills, including, but not limited to, reading comprehension, writing, and computation. The governing boards of all elementary school districts and unified school districts maintaining grades six or eight, or the equivalent, must adopt such proficiency standards (*Education Code* Section 51215).

In developing proficiency standards, governing boards must involve parents, school administrators, teachers, and counselors in the process; students must be involved in the development of standards for the high schools (*Education Code* Section 51215).

The progress of students toward meeting the proficiency standards shall be assessed at least once in grades four through six, once in grades seven through nine, and twice in grades ten through eleven. Once a student has met the standards up to prescribed levels for graduation from high school, his or her progress need not be reassessed (*Education Code* Section 51216).

A student who does not demonstrate sufficient progress toward mastery of basic skills has the right to participate in a conference with the school principal or the principal's designee about his or her progress. The parent or guardian of such a student also has the right to meet with the principal or the principal's designee to discuss the assessment results and recommended actions to further the student's progress (*Education Code* Section 51216).

A student who has not met the locally adopted proficiency standard shall *not* receive a diploma of graduation from high school (*Education Code* Section 51217).

Districts are required to offer all students courses of study that (1) fulfill the requirements for university admission; and (2) provide entry-level employment skills in business or industry (*Education Code* Section 51228).

Effective in the 1986-87 school year, the minimum requirements for a high school diploma will be (1) three one-year courses in English; (2) two one-year courses in mathematics; (3) two one-year courses in science, including biological and physical science; (4) three one-year courses in social studies, including U.S. history and geography; world history, culture, and geography; and American government, civics, and economics; (5) one one-year course in visual or performing arts or foreign language; and (6) two one-year courses in physical education, unless otherwise exempted by law (*Education Code* Section 51225.3). In addition, *Education Code* Section 51226 requires (1) the Superintendent of Public Instruction to develop model curriculum standards for the course of study required by *Education Code* Section 51225.3; and (2) not less than every three years, the governing board of each school district to compare local curriculum, course content, and course sequence with these standards.

Governing boards, with the active involvement of parents, administrators, teachers, and students, also must have adopted alternative means for students to complete the prescribed course of study mandated in existing law (*Education Code* Section 51225.3).

Independent Study

Students in grades seven through twelve may participate in an independent study program as an alternative to a regular classroom program of instruction. The school district governing board authorizing the independent study program shall adopt written policies and procedures governing such study. All courses of independent study shall be designed to fit the educational needs of the participating students.

The program for each student must be established by a contract among the student, the school, the parent, and the individual supervising the student. This contract should ideally include a statement of objectives, the manner in which the student's progress is to be evaluated, the manner and times of reporting on the student's progress, and the length of time expected to be required for achievement of the objectives. Students of an elementary or secondary school, an opportunity school, or a continuation high school may enroll in the district's independent study program (*Education Code* Section 51745; sections 11700—11703 of the *California Administrative Code, Title 5, Education).*

Physical Education Options

Education Code sections 51222 and 51241 deal with exemptions of students from physical education classes. The law permits governing boards to exempt permanently from courses in physical education those students who (1) are sixteen years of age or older and have been enrolled in grade ten for one academic year or longer; (2) are enrolled as a postgraduate student; or (3) are enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are otherwise scheduled for recreation or exercise.

The governing boards of school districts that maintain a high school are required to offer a variety of elective physical education courses to exempted students in grades eleven and twelve. Students who are exempt are prohibited from attending fewer total hours of courses and classes than they would have attended in regular physical education classes (*Education Code* sections 51222 and 51241).

Special Programs

As part of California's commitment to provide equal educational opportunities for all students, the public schools conduct several types of programs that are designed to provide educational services to students with exceptional or special needs.

Special Education

Special education programs are designed to meet the needs of all school-age handicapped students. Federal legislation (Public Law 94-142) requires states, as a condition of receiving federal funds for special education, to provide a free appropriate education to

all school-age handicapped persons. Public Law 94-142 establishes extensive rights and protections for handicapped students and their parents and corresponding obligations of local educational agencies. The provisions of this federal law are currently implemented statewide in California.

Education Code sections 56000—56875 deal with special education programs. These sections of the *Education Code* establish for handicapped students and their parents rights and protections that are in excess of those established by federal laws. In general, school districts or offices of county superintendents of schools must seek out and identify every child eligible for special education services, must design an individual learning plan for each child, and must provide educational services that meet the needs of the child at no expense to the parent or guardian. Parents and guardians must consent to evaluation of their child for special education services and to their child's special education program, and they have the right to participate in the planning of the child's special education program. Both a parent and a local educational agency have the right to request an administrative hearing regarding assignments on the identification, assessment, or educational placement of a child; or the provision of a free, appropriate education of the child.

Compensatory Education

Currently, three basic programs for educationally disadvantaged students are maintained in California public schools: Elementary and Secondary Education Act (ESEA) of 1965, Title I, programs; educationally disadvantaged youth programs; and bilingual education programs.

ESEA, Title I, programs. The majority of California schools provide compensatory education programs under provision of Title I of ESEA (Title 20, *United States Code* Section 241[a]). ESEA, Title I, programs offer educational services beyond regular services to children from low-income families. Each district with an ESEA, Title I, program and each school participating in the program must have an advisory committee, the membership of which must be comprised of more than a simple majority of parents of program participants.

The State Board of Education has established a procedure for the processing of complaints of alleged violations of ESEA, Title I, regulations; other pertinent federal regulations; and state regulations (Section 3951 of the *California Administrative Code, Title 5, Education).*

Educationally disadvantaged youth programs. Educationally disadvantaged youth (EDY) programs (*Education Code* sections 54000-54007) are state-funded programs similar to those conducted under ESEA, Title I. Educationally disadvantaged youth programs and bilingual education are both now funded by the State Economic Impact Aid Program (*Education Code* Section 54020, et seq.).

A principal requirement for applicants for EDY funds is the development of a school-site plan in which applicants describe the specific services that will be provided to meet the identified needs of eligible students (sections 3900—3947 of the *California Administrative Code, Title 5, Education.)*

Bilingual education. California is committed to developing and maintaining programs to meet the needs of limited-English-proficient (LEP) students. The Bilingual-Bicultural Education Act of 1976 as amended by the Bilingual Education Improvement and Reform Act of 1980 (*Education Code* sections 52160—52179) directs schools to establish learning plans for limited-English-proficient (LEP) students and makes these programs required whether or not schools receive any supplemental state funds. These programs are designed to be consistent with the ruling of the United States Supreme Court in the case of *Lau* v. *Nichols* (414 U.S. 563 [1974]). In the opinion of the Court, failure to provide instruction in a language students can understand is discrimination on the basis of national origin. Students are guaranteed equal access to knowledge and skills being presented in school and equal opportunity to progress at the same rate whether or not they speak the English language.

School Attendance of Married Students

No court cases involving the issue of the school attendance of married students are pending in California. However, in the 1929 case of *McLeod* v. *State* (154 Miss. 468), the Mississippi Supreme Court held that a school board regulation barring persons from the schools solely on the basis of their being married was arbitrary and unreasonable and therefore void. In support of this holding the court stated:

> Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating . . . . And furthermore, it is commendable in married persons of school age to desire to further pursue their education and thereby become better fitted for the duties of life.

In an opinion dated April 24, 1962 (39 Ops. Cal. Atty. Gen. 256), the California Attorney General concluded that:

> The governing board of a school district does not have the authority to exclude pupils from the public school solely by reason of their married status.

In the same opinion the California Attorney General stated that the *McLeod* case was well-reasoned and that the courts in California would probably reach the same conclusion.

Under the compulsory education law, a married person under the age of eighteen must attend a public or private day school unless exempted by statute.

School Attendance of Pregnant Students

In California a pregnant student may not be discriminated against in any aspect of the educational program, including compulsory participation or in exclusion from any classes or extracurricular activities. School systems may operate programs, schools, and classes for pregnant students; or such students may receive individual instruction in their own home. However, attendance in any of the above must be truly optional; it must be at the request of the student or upon medical certification that such is necessary. Attendance is not considered optional if the only options are leaving school or enrolling in a special program. Any disability related to pregnancy shall be treated in the same manner and under the same policies as any other temporary disability or physical condition (Title 20, *United States Code,* Section 1684; Title 45, *Code of Federal Regulations,* Section 86.40).

It is now possible for students to obtain, without parental consent, information about and/or treatment for venereal disease, pregnancy, abortion, and birth control. School officials are authorized, but not required, to excuse a student from school for the above purposes. Absences for such purposes need not be verified by the parent and may be verified instead by a school official. Schools need not volunteer to a parent the fact of a student's absence or the reason for it. Upon specified request for such information by the parent or guardian, however, the school may not keep such information confidential (*Civil Code* Section 34.5; *Education Code* Section 46010; Section 421 of the *California Administrative Code, Title 5, Education).*

Exclusion from School

As provided in *Education Code* Section 48212, the governing board may exclude from attendance any student whose physical or mental disability is such as to cause his or her attendance to be inimical to the welfare of other pupils. Before such exclusion, parents shall be notified of the facts leading to the decision to exclude the child and shall be given the right to meet with the governing board to discuss the proposed exclusion. At such meeting the parents shall be given the opportunity to inspect all documents relied on for the proposed exclusion; challenge evidence; question witnesses; and present evidence on the child's behalf, including calling witnesses.

Should a child be excluded from attendance pursuant to *Health and Safety Code* Section 3118 (when a child resides where any contagious, infectious, or communicable disease exists) or *Education Code* Section 49451 (when good reason exists for believing that the child is suffering from a recognized contagious or infectious disease), the governing board is not required to send prior notice of the exclusion to the parent or guardian.

IV

Free Speech

The information presented in Section IV deals with students' freedom of expression, students' refusal to salute the flag, religion in the schools, student involvement in school affairs, student organizations, student independent newspapers, and student representatives on school district governing boards.

Student Expression

Education Code Section 48907 contains the following statement about students' freedom of expression:

> Students of the public schools shall have the right to exercise freedom of speech and of the press, including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Education Code Section 48907 also extends the right of free expression to official student publications and limits the authority of faculty journalism advisers to prohibit the publication of student materials. However, the advisers are charged with the responsibility of ensuring that the publications are not in violation of any provision of *Education Code* Section 48907 and that professional standards of English and journalism are maintained in the publications.

Education Code Section 48907 also requires that the governing board of a school district and each county superintendent of schools must adopt rules and regulations relating to the exercise of free expression by students upon the premises of each school under their control. These rules and regulations must include reasonable provision for the time, place, and manner of conducting such activities.

Refusal to Salute the Flag

In 1938 in the case of *Gabrielli* v. *Knickerbocker* (12 Cal. 2d 85), the California Supreme Court held that a pupil had been properly expelled from school for refusing to salute the American flag; later, however, the U.S. Supreme Court handed down an opposite opinion in another case. It held, in the case of *West Virginia State Board of Education* v. *Barnette* (319 U.S. 624 [1943]), that the action of the State Board of Education in requiring public school students to salute the flag while reciting the Pledge of Allegiance, under penalty of expulsion, exceeded the constitutional limits of the power of the board and violated the First and Fourteenth Amendments. The *Barnette* case involved children who refused to salute the flag because such action was against their religious beliefs. In subsequent cases the courts have also held that requiring students to utter what is not in their minds is a violation of their freedom of speech. Thus, students may stand quietly during the giving of the Pledge of Allegiance to the flag. They do not, however, have the right to disrupt the exercise.

Each school day in every public school appropriate patriotic exercises must be conducted. The giving of the Pledge of Allegiance to the flag of the United States of America is one way in which this requirement may be met (*Education Code* Section 52720).

In elementary schools the patriotic exercises must be conducted at the beginning of the first regularly scheduled class in which the majority of the pupils normally begin the school day. In secondary schools the exercises must be conducted in accordance with regulations established by the district governing board.

Religion

The First Amendment of the U.S. Constitution mandates the separation of church and state and guarantees to each person the right to exercise his or her religious beliefs (*Epperson* v. *Arkansas*, 393 U.S. 97 [1969]).

Religious Clubs

The enactment of the Equal Access Act (P.L. 98-377) by the U.S. Congress in August, 1984, has had a tremendous impact on schools across the nation. The Act requires that public secondary schools receiving federal financial assistance and having a limited open forum not deny to any student group the opportunity to meet in school facilities.

Numerous issues will arise as to the constitutionality of this Act in relation to existing California law and court decisions (*Johnson* v. *Huntington Beach Union High School District*, 68 Cal. App. 3d 1 [1977]).

The U.S. Supreme Court has recently agreed to review an appellate court decision in *Bender* v. *Williamsport Area School District* (741 F. 2d 538 [1984]) that held that a school district that had a limited open forum could not allow a religious club to meet in a manner similar to that provided in the Equal Access Act. While a decision in this case may put many federal constitutional questions to rest, significant state constitutional questions will be left unanswered in light of decisions by California courts and the California Attorney General.

Prayers

The U.S. Supreme Court has held that compulsory verbal prayer in the public schools is a violation of the First Amendment prohibition against the establishment of religion (*Engel* v. *Vitale*, 370 U.S. 421 [1962]). The California Attorney General has opined that religious prayers may not be made a part of the curriculum of the public schools (925 Ops. Cal. Atty. Gen. 316).

Religious Programs

The public schools must avoid promotion of a religion or indoctrination of their students in a religion. For example, the displaying of a nativity scene on the school premises may be in violation of the U.S. Constitution. Symbols of Christmas, such as Santa Claus, a Christmas tree, reindeer, holly wreaths, and yule logs, may fall into the category of permitted display items. Schools are entitled to explain the nature of religious days as well as civil holidays, and they may explain the meaning of religious days to members of the religions involved. Such programs, however, must be explanatory rather than devotional. It is important that no person's religious freedom be infringed upon and that all students and teachers be able to participate in holiday observances.

Student Involvement

In recent years school authorities nationwide have become increasingly aware of the importance of student involvement in school affairs, such as curriculum planning and the formation of criteria concerning proper student conduct. Many people believe that active participation by students (1) enriches their education and improves and strengthens the educational institutions; (2) can help reduce communication barriers between the students and school authorities; (3) can ensure a maximum of curricular relevancy; and (4) helps make students responsible for their behavior.

Obviously, the degree to which students become involved is highly dependent on not only the age, maturity, and sophistication of the students but also on the complexity of the issues in question. However, since the students are the "consumers" and must con-

form to the standards of conduct, dress, and grooming set down by the school authorities, they should have some type of representation in the making of such standards; and their suggestions should receive careful analysis and full consideration.

Education Code sections 52000—52035 provide for the improvement of elementary, intermediate, and secondary schools through the development and implementation of school improvement plans. The responsibility of developing and implementing such plans is vested in a school-site council. In secondary schools the membership of the school-site council must include students selected by students who attend the school.

In short, student participation in school affairs can be seen as an extension of the students' education. Schools should encourage students to express their opinions, to take stands on controversial issues, and to present ideas that could help improve the educational process.

Student Organizations

Education Code Section 48930 authorizes any group of students to organize within the public schools a student body association, which shall be subject to the approval and the control and regulation of the governing board of the school district. Any such organization must not be in conflict with the authority and responsibility of the public school officials and must have as its purpose the conduct, on behalf of all the students, of activities approved by the school authorities.

Education Code sections 48933 and 48936 also stipulate that the funds of the student body organization must be deposited in a federally insured bank or banks or invested in a manner approved by the governing board of the district. The funds shall be spent in the manner established by the student body organization, subject to the approval of (1) an employee or school district official designated by the governing board; (2) the certificated employee who is the designated adviser of the student body organization; and (3) a representative of the student body organization. The supervision of all funds raised by any student body or student organization using the name of the school shall be provided for by the governing board (*Education Code* Section 48937).

Student Independent Newspapers

The term *independent newspapers* or *underground newspapers* generally refers to periodicals that are written and published by students at their own expense, off school premises, and that are not officially sanctioned by school authorities. Court decisions (*Burnside* v. *Byars,* 363 F. 2d 744 [1966]; *Scoville* v. *Board of Education of Joliet Tp. H.S. Dist. 204, etc., Ill.,* 425 F. 2d 10[1970]; and *Sullivan* v. *Houston Independent School District,* 307 F. Supp. 1328 [1969]) have made it quite clear that student independent newspapers are protected by the First Amendment from suppression by public school officials. The courts have held that such newspapers may be distributed on public school premises without prior censorship, provided that (1) the papers do not contain materials that are either actionably libelous or obscene (*Baker* v. *Downey City Board of Education,* 307 F. Supp. 517 [1969]); (2) their distribution is not proven to be the direct cause of concurrent disruptions (*Scoville* v. *Board of Education of Joliet Tp. H.S. Dist 204, etc., Ill.);* and (3) administrators do not have conclusive proof that directly related disruptions would occur in the future (*Whitfield* v. *Simpson,* 312 F. Supp. 889 [1970]).

Although student underground newspapers are protected to an extent by the First Amendment, the legal status of these publications still remains uncertain. One must remember that school authorities are given the power to maintain order within the school and that in doing so they may prohibit underground newspapers from the school grounds if they believe that such publications would cause a disturbance or disrupt the learning process in the school. As stated by

the court in the case of *Norton* v. *Discipline Committee of East Tennessee State University* (419 F. 2d 195 [1969]):

> It is not required that the . . . authorities delay action against inciters until after the riot has started and buildings have been taken over and damaged. The . . . authorities had the right to nip such action in the bud and prevent it in its inception.

The court also noted in the case of *Baker* v. *Downey City Board of Education* that, while students have the right to criticize and dissent, they may be more severely restricted in their method of expression than are their elders: "The education process must be protected and educational programs properly administered."

In the case of *Susannah Bright* v. *Los Angeles Unified School District* (18 Cal. 3d 450 [1976]), the California Supreme Court concluded that state law gives to students the right to distribute or sell materials that are not libelous or obscene or that do not incite students in such a way as to create a clear and present danger of the commission of unlawful acts or the violation of lawful school regulations or the disruption of the orderly operation of the school. School authorities *may* require that materials be submitted to them a reasonable time in advance of sale or distribution but *may not* require prior approval.

The court also made it clear that the school may discipline a student who distributes libelous or obscene material, incites others to violate the law or school regulations, or disrupts the operation of the school.

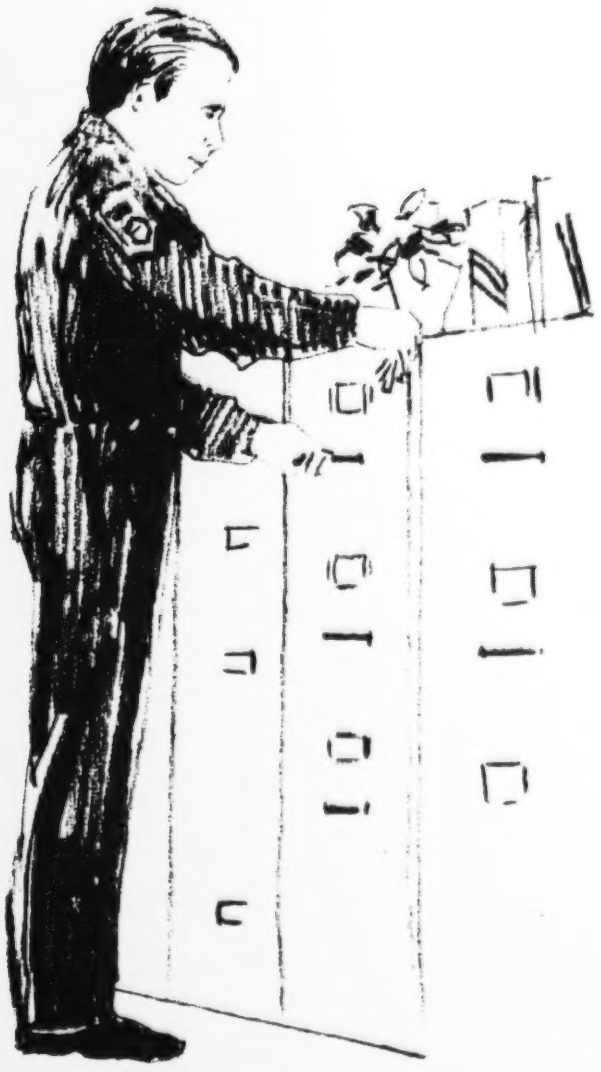
Student Representative on Governing Board

Education Code Section 35016 permits a prescribed number of high school students to petition for a student member to be included on the school district governing board. The number of required signatures is set at 500 (or 10 percent) of the district's high school students, whichever is less. On receipt of such a petition, each school district governing board maintaining one or more high schools must add at least one nonvoting student member. The nonvoting student member serves a one-year term and has the right to attend each and all governing board meetings, except executive sessions. The nonvoting member is entitled to the same travel allowances as voting members but, unlike regular members, is not entitled to compensation for attendance at board meetings.

The California State Board of Education has had a student representative since 1969. Since 1984 the student member has been appointed by the Governor to serve a one-year term subject to confirmation by two-thirds vote of the Senate. The student member has the right to vote on Board actions (*Education Code* Section 33000.5).

V

Law Enforcement Agencies and the Schools



The information presented in Section V pertains to the presence of law enforcement officers in the schools and searches and seizures.

Law Enforcement Officers in the Schools

Law enforcement officers have not only the right but also the duty to use all necessary and proper means to protect society. In the performance of their duty throughout the community, they have the right to interview and, when necessary, to arrest students who are in attendance at school. When law enforcement intervention is reasonably necessary, it is also quite frequently of immediate urgency. To permit a student to claim school as a "sanctuary" might not only hinder but also, in many cases, effectively prevent the apprehension of serious violators of the law (32 Ops. Cal. Atty. Gen. 46, at 47). While the constitutional rights of students may not be infringed on by law enforcement officers, school officials are not required nor should they attempt to prevent such officers from accomplishing their intended goal (54 Ops. Cal. Atty. Gen. 46).

One must remember that a student is not property; he or she is a citizen of the state of California and, as such, is under its guardianship and subject to its supervision. Whenever a student violates the laws of the state, the state, in its role of *parens patriae* ("acting as though it were parents"), may intervene and take custody of the student to protect that student as well as society. When such action is required, the custody of the parent, guardian, or school officials, who stand *in loco parentis* ("in place of the parent"), is superseded by that of the state. Thus, consent of the parent, guardian, or school officials is not a prerequisite to the state's action, since the parent, guardian, or school officials at that time have lost their custody to the state. Although law enforcement officers do not have to obtain the consent of the parent, guardian, or school officials prior to placing a child in custody, once they have done so, they must immediately convey notice of that action to the parent or guardian as well as to the proper school authorities.

The utmost consideration must be given to the rights and interests of all persons involved in the types of cases under consideration in this section. Whenever possible, law enforcement officers should not take any action without giving prior notice to the parent or guardian of a student. Whenever possible, school officials should be present when law enforcement officers question a student. Certainly, a student should not be removed from school without notice of that fact having been conveyed to the proper school authorities. When a student is detained for any reason, the parent or guardian should be informed of that fact immediately.

A law enforcement officer, in the performance of his or her duty, is endowed with the power to arrest or question a student while the latter is in attendance at school (54 Ops. Cal. Atty. Gen. 96). However, in taking such action, a law enforcement officer must give due consideration and recognition to the rights and responsibilities of all persons involved. Furthermore, whenever possible, school officials should be consulted before the law enforcement officers act. Parental consent is not a prerequisite to arresting or questioning a student or to removing him or her from school to accomplish these ends. The parent or guardian should, however, be informed immediately of any such action (32 Ops. Cal. Atty. Gen. 46).

When a principal or other school official releases a minor student to a law enforcement officer for the purpose of removing the student from the school premises because the student is a victim of suspected child abuse, the school official must provide the law enforcement officer with the name and address of the student's parent or guardian. However, the law enforcement officer may refuse to disclose the place where the student is being held for as long as twenty-four hours if he or she believes the student would be endangered by such a disclosure. (*Penal Code* Section 11166 deals with teachers' responsibilities in reporting suspected child abuse cases.) In that case, however, the law enforcement officer must inform the parent or guardian whether the student requires and is receiving medical or other treatment (*Education Code* Section 48906).

Searches and Seizures

The courts have demonstrated that students are not entitled to the same degree of Fourth Amendment rights as adults. It is clear, however, that the Fourth Amendment is not entirely inapplicable to students and that it does place some limits on the conduct of school officials who have been given the authority, within the scope of their duties, to detain and search a student while the student is under the control of the school (*In re* Thomas G., 11 Cal. App. 3d 1193). When the purpose of a search is within the scope of the school official's duties, the justification thereof is not measured by the rules authorizing the search of an adult by the police (*In re* Fred C., 26 Cal. App. 3d 320).

Although proper school authorities may conduct searches whenever such searches reasonably fall within the scope of their duties and responsibilities, the Fourth Amendment prohibits searches at the whim of school officials. A search by a school official must generally meet two conditions. First, the search must be within the scope of the school official's duties. Second, the search must be reasonable in terms of the facts and circumstances of the case. As the court stated in the case of *People* v. *Ingle* (53 Cal. 2d 407), "there is no exact formula for the determination of reasonable cause for an arrest; each case must be decided on its own facts and circumstances, and on the total atmosphere of the case." (See *New Jersey* v. *T.L.O.* previously mentioned on page 2.)

Emancipated Minors

Certain persons under eighteen years of age are deemed to be emancipated minors. They must have received a judicial declaration of emancipation (*Civil Code* sections 62—64).

VI

Prohibitions Against School Districts and Personnel

The information presented in Section VI concerns the levying or requiring of fees, deposits, and charges to students and the prohibiting of sex discrimination.

Fees, Deposits, and Charges

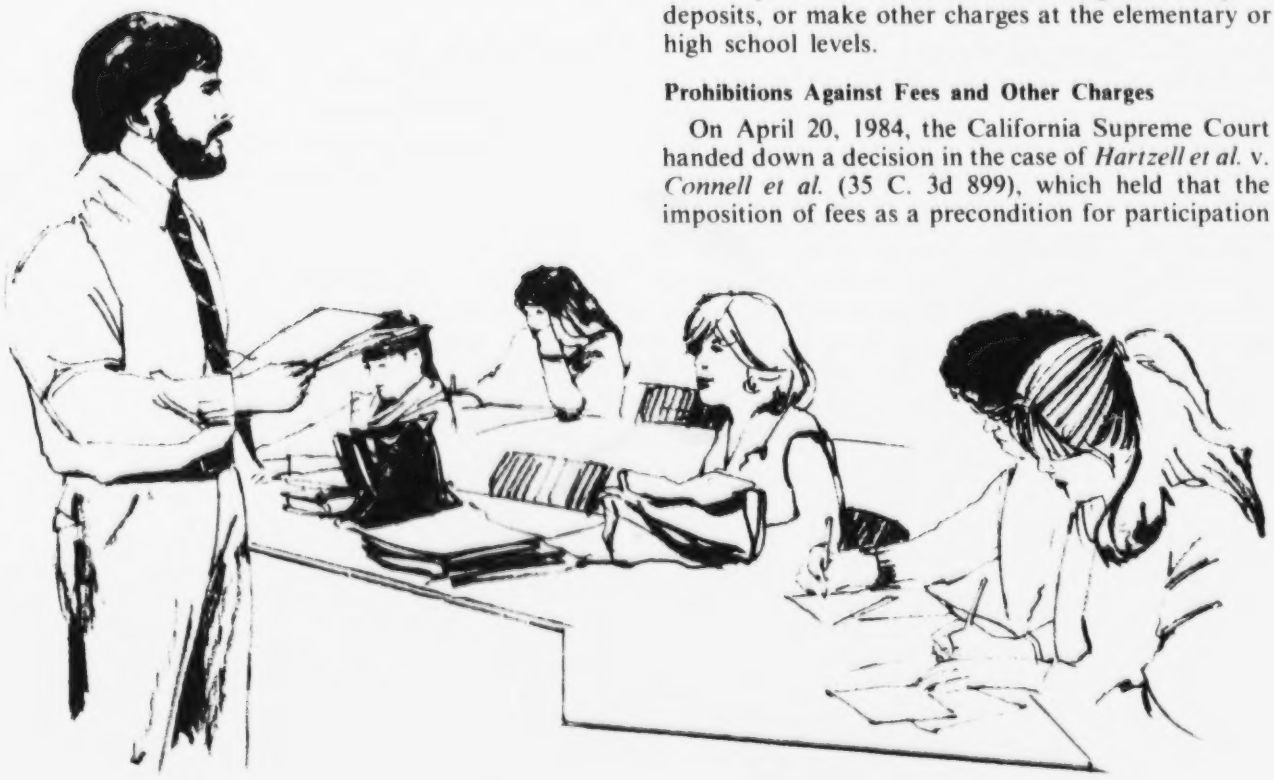
The authority for providing free public schools in California is set forth in Article IX, Section 5 of the California Constitution, which provides that:

> The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

In the laws that it has enacted to establish and govern the system of public schools, the Legislature has adhered very closely to the constitutional mandate for free public schools and has consistently withheld authority for school districts to charge fees, require deposits, or make other charges at the elementary or high school levels.

Prohibitions Against Fees and Other Charges

On April 20, 1984, the California Supreme Court handed down a decision in the case of *Hartzell et al.* v. *Connell et al.* (35 C. 3d 899), which held that the imposition of fees as a precondition for participation



in extracurricular programs offered by public schools on a noncredit basis violates the free school guarantee of the California Constitution and the prohibition against school fees contained in Section 350 of the *California Administrative Code, Title 5, Education,* which states that:

> A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.

Instructional materials must be furnished by elementary, high school, and unified school districts to their students, except adults in classes for adults, and no charge may be made for their use (*Education Code* sections 60070, 60410, and 60411).

Writing and drawing paper, pens, ink, crayons, lead pencils, and other necessary supplies must be furnished under the direction of the governing board of each school district (*Education Code* Section 40011).

Permitted Charges

Certain statutory exceptions to the general rule against fees and other charges should be noted:

1. The governing board of a high school district or unified district may require a deposit on books furnished in classes for adults. The deposit shall be refunded when the books are returned, provided they are returned in good condition. Reasonable wear and tear is to be expected (*Education Code* Section 60410).
2. A governing board may charge a fee to adults for any class except classes in English and citizenship for the foreign born and classes in elementary subjects. Also, no charge shall be made for a class for which high school credit is granted when such class is taken by a person not holding a high school diploma (*Education Code* Section 52612).
3. A governing board may, by its own regulations, provide for the sale of materials purchased from the incidental expense account to any student in classes for adults (*Education Code* Section 52615). It may also sell to persons in classes for adults materials needed by such persons for making articles in the classes in which they are enrolled (*Education Code* Section 39527).
4. A school district furnishing materials to a student may sell to the student, at cost, any items that the student has fabricated from such materials (*Education Code* Section 39526).
5. A governing board may charge student fees to students enrolled in community service classes. However, the fees must not exceed the cost of maintaining such classes (*Education Code* Secton 51815).
6. A county superintendent of schools may contract with a student's parent or guardian for a portion of the expenses of lodging and boarding the student in a technical, agricultural, or natural resource conservation school (*Education Code* Section 1798).
7. A governing board must charge a tuition fee before a student whose parents are actual and legal residents of a foreign country adjacent to California can be admitted as a student (*Education Code* Section 48052).
8. A governing board may enter into an agreement with a parent or guardian of a student residing in an adjoining state for the education of that student. The agreement must provide for the payment to the governing board of an amount sufficient to reimburse it for the total cost of educating the out-of-state student (*Education Code* Section 48050).
9. The Legislature has authorized charges to be made for the transportation of students under limited circumstances, as specified in *Education Code* sections 39836 and 39837.
10. A governing board of a district conducting a study trip (field trip) pursuant to *Education Code* Section 35330 is required to provide or make available, through accident insurance, medical or hospital service for students injured while participating in such study trips. The cost of the insurance may be paid by the district or the insured student or his or her parent or guardian (*Education Code* Section 35331).
11. Governing boards are required to provide insurance for medical and hospital expenses resulting from accidental bodily injuries for members of an athletic team (*Education Code* Section 32221). The cost of providing such insurance may be borne by the district; the student body; or other persons, including the student covered by such insurance (*Education Code* Section 32221). If the student and his or her parent or guardian are unable to pay the insurance premium, such insurance must be paid for with district funds or student body funds (*Education Code* Section 32221). Governing boards may provide other accident insurance (*Education Code* sections 49470—49472).
12. School districts are authorized to establish cafeterias and sell food to students (*Education Code* sections 39870—39874).
13. A school district may require a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country to make a deposit on such equipment (*Education Code* Section 40015).

In addition, the court in the *Hartzell* decision noted that "educational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events" (*Hartzell,* supra, at page 911, footnote 14). Thus, a charge could be made to watch an athletic event but not to participate.

Payment for Damage or Loss

The *Education Code* provides that the parent or guardian of a minor must be held liable for damage caused by a minor who willfully cuts, defaces, or otherwise injuries property belonging to a school district. The parent or guardian is liable also for school district property loaned to a minor and not returned on demand (*Education Code* Section 48904).

Study Trips

A school district may not prevent a student from making a study trip or excursion because of lack of sufficient funds, as provided in *Education Code* Section 35330. However, a school district may conduct an activity, such as study trip, as an extracurricular activity. The student may be required to pay an admission fee to participate in such an extracurricular activity, but the time spent in such activity cannot be counted in the computation of average daily attendance (Section 405 of the *California Administrative Code, Title 5, Education*).

Although the authority for charging fees in *Education Code* Section 35330 is an exception to the prohibition in Section 350 of *Title 5, California Administrative Code,* supra, neither Section 35330 nor any of the *Education Code* provisions cited on page 20 of this handbook have been tested constitutionally by the courts.

Students on study trips have the same options that they have on campus with regard to food: they may take food from home, or they may buy it from any available source.

Sex Discrimination

Title IX of the Education Amendments of 1972 (Title 20, *United States Code,* Section 1681 [a]) provides that, with certain exceptions, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." In general, Title IX prohibits schools from discriminating on the basis of sex in admissions, counseling, educational programs or activities, and employment.

Guidance and Enrollment

The *Education Code* contains some parallel prohibitions against sex discrimination. For example, *Education Code* Section 40 prohibits counselors from offering to students of one sex vocational or school program guidance that differs from that offered to students of the opposite sex. *Education Code* Section 40 also prohibits school districts from either requiring or preventing the enrollment of students in a particular class or course because of their sex. Thus, the practices of placing only male students in shop classes and only female students in homemaking classes are prohibited.

Other effects of Title IX are that physical education classes must be open to enrollment for all students and, if a unit of instruction is required for one student, it must be required for all. Thus, many schools are offering coeducational physical education programs and are encouraging students to participate in activities that have previously been considered "only for boys" or "only for girls."

Tests

No test, questionnaire, survey, or exam containing any questions regarding personal beliefs or practices in sex, family life, morality and religion of a student, or any questions, tests, surveys, or examinations about his or her parents' or guardians' beliefs or practices in these areas shall be administered to any pupil in grades one through twelve without written permission of the student's parents or guardians (*Education Code* Section 60650).

Athletic Programs

With regard to athletic programs, the intent of the Legislature is that opportunities for participating in interschool athletic programs in public high schools be provided on as equitable a basis as possible for male and female students (*Education Code* Section 49020). Further, *Education Code* Section 49021 provides that females be given the same opportunity to participate in athletics and to compete with other females in individual and team sports as males. Under provisions of *Education Code* Section 49023, facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, locker rooms, and medical services.

Student body groups that support athletic activities should review their processes and procedures to determine whether they are in compliance with state and federal laws. Pep rallies, for example, should be provided for both boys' and girls' sports; boys' and girls' athletic programs should be covered equally in the school yearbook; and funds should be budgeted in relation to the numbers of students served.

VII

Information Disclosure by Schools

The information presented in Section VII deals with the obligation of governing boards of each school district to inform parents and guardians of district policies concerning their child's education and the right of parents and guardians to access their child's cumulative record.

Parental Information

At the beginning of the first semester or quarter of every school year, the governing board of each school district must forward to the parent or guardian of every student a notice containing district policies about the following (*Education Code* Section 48980):

1. Student absences for religious purposes (*Education Code* Section 46014)
2. Absences excused for justifiable reasons (*Education Code* Section 48205)
3. Cooperation in control of communicable disease and immunization of students (*Education Code* Section 49403)
4. Administration of prescribed medication for a student (*Education Code* Section 49423)
5. Refusal to consent to a physical examination of a student (*Education Code* Section 49451)
6. Medical or hospital services for students (*Education Code* Section 49472)
7. Excusing of a student from health instruction, family life education, and sex education because of religious beliefs (*Education Code* Section 51240)
8. Sex education courses (*Education Code* Section 51550)
9. Selected definitions and general provisions of special education programs (Article 3 [beginning with Section 56030] of Chapter 1 of Part 30 of the *Education Code*)
10. Availability of and requirements for participation in a nutrition program (Article 9 [beginning with Section 49510] of Chapter 9 of the *Education Code*)
11. Students leaving the school grounds during lunch period (if such a policy exists) (*Education Code* Section 44808.5)

In addition, when 15 percent or more of the students speak a primary language other than English,

these notices also must be written in the primary language and may be responded to in that language (*Education Code* Section 48985).

Districts must also send notices to parents or guardians about the following:

1. School improvement programs and school-site councils (*Education Code* Section 52011)
2. Alternative schools and programs (*Education Code* Section 58501)
3. The parent's or guardian's right to access to his or her child's records and the right to challenge those records (*Education Code* Section 49063)
4. The district's policy (if it has such a policy) on the administration of corporal punishment and the parent's or guardian's rights regarding the administration of corporal punishment to his or her child by school personnel (*Education Code* Section 49001)
5. Grievance procedures related to alleged sex discrimination practices (Title 45, *Code of Federal Regulations*, sections 86.8 and 86.9)
6. Vision appraisal and refusal for such on the grounds of religious beliefs (*Education Code* Section 49455)

Student Record File

In recent years a student's cumulative record has become the repository of a great deal of information concerning the student and his or her family. Thus, the educational records of individual students have become increasingly personal in nature. Student records commonly contain scholastic data; health records; and the results of personality tests, psychological screening, and evaluations by professional persons.

Because student records tend to be so personal in nature, the lawmakers of California have set down laws pertaining to such records (*Education Code* sections 49060—49078). These laws are basically designed to protect and ensure the privacy of the individual student and to ensure compliance with the requirements of the federal Family Educational Rights and Privacy Act of 1974 (Title 20, *United States Code*, Section 1681[g]).

One very basic law concerning student records is that requiring notification of the parent or guardian of his or her right to access to his or her child's records. This notice is to be provided to the parent or guardian on the student's initial day of enrollment. When practical, the notice must be in the student's home language and in a form that reasonably notifies the parent or guardian of the following or the *availability* of the following specific information (*Education Code* Section 49063):

1. The types of records and information therein that are directly related to students and maintained by the school
2. The name and position of the official responsible for the maintenance of each type of record, the persons that have access to those records, and the purpose for which they have such access
3. The policies of the school for reviewing and expunging those records
4. The absolute right of the parent or guardian to access to student records
5. The procedures for challenging the content of student records
6. The cost (if any) to the parent or guardian for reproducing copies of records
7. The categories of information that the institution has designated as directory information and the parties to whom such information will be released unless the parent or guardian objects

Rights of Parents or Guardians

The parents or guardians of currently enrolled or former students have an absolute right to access to any and all student records that are related to their children and that are maintained by school districts or private schools. The editing or withholding of any such records is prohibited. Access to these records must be granted no later than five days following the request (*Education Code* Section 49069).

Parents and guardians are also entitled to notification from their child's school district about many matters that affect or may affect their child. Medical issues, special education, and nondiscrimination are only a few of the areas about which districts must supply specified information to parents and guardians.

Transfer of Records

When a student transfers to another school district or private school (in California or another state), a copy of the student's records shall be transferred, on request, from the other district or private school. The original or a copy must also be retained permanently by the sending district. Student records must not be withheld from the requesting district because of any charges or fees owed by the student or his or her parent or guardian. This provision applies to students in kindergarten and grades one through twelve in both public and private schools (Section 438(c) of the *California Administrative Code, Title 5, Education).*

Publications Available from the Department of Education

This publication is one of over 600 that are available from the California State Department of Education. Some of the more recent publications or those most widely used are the following:

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